

SEAL UNDER
NOTICE

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DEC 20 2016
SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

FILED

DEC 20 2016

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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 OAKLAND DIVISION

13 UNITED STATES OF AMERICA,) CR 4:16-CR-71531-MAG
14 Plaintiff,) [PROPOSED] ORDER OF DETENTION
15 v.) FILED UNDER SEAL
16 AMER SINAN ALHAGAGGI,)
17 Defendant.)

18
19 On December 14, 2016, the defendant appeared at a detention hearing on the complaint filed in
20 the above-referenced case. The government moved for detention. The Court has carefully considered
21 the proffers and argument of the government and the defendant's counsel, along with the information
22 provided by the U.S. Pretrial Services Officer. For the reasons set forth below, as well as those stated on
23 the record on December 14, 2016, the Court finds that the government has met its burden of showing
24 that the defendant poses both a serious flight risk and a danger to the community. Therefore, the Court
25 orders that the defendant be detained.

26 I. LEGAL STANDARD

27 Under the bail statute, 18 U.S.C. § 3142, a Court may order the release of a defendant unless

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1 conditions of release will not reasonably assure the defendant's appearance or the safety of the
 2 community or another person. The Court must order a defendant detained if, after a hearing pursuant to
 3 the provisions of Section 3142(f), the Court finds that conditions cannot be fashioned to assure the
 4 defendant's appearance in Court or the safety of the community or another person. See 18 U.S.C. §
 5 3142(e).

6 In evaluating whether conditions can be fashioned to assure the safety of the community or
 7 another person, a Court considers the factors in Section 3142(g), including (1) the nature and
 8 circumstances of the offense, including whether the offense is one of certain enumerated crimes
 9 (including a controlled substance offense), (2) the weight of the evidence, (3) the history and
 10 characteristics of the person (including his job, financial resources, family ties, community ties,
 11 substance abuse history, physical and mental condition, character, criminal history, past conduct, track
 12 record in appearing in court, and whether at the time of arrest the person was on supervision for parole,
 13 probation, or other release in a pending criminal case), and (4) the nature and seriousness of the danger
 14 to any person or the community posed by the person's release.

15 **II. PROCEDURAL FACTS**

16 The defendant initially appeared before the Honorable Donna M. Ryu, U.S. Magistrate Judge, on
 17 November 30, 2016, charged by complaint with one count of aggravated identity theft, in violation of 18
 18 U.S.C. § 1028A. Judge Ryu provisionally appointed the defendant counsel on that date; on December 2,
 19 2016, the defendant appeared again before this Court so that counsel could be formally appointed. At
 20 that time the parties jointly stipulated to waive time for speedy trial purposes, and asked to schedule a
 21 detention hearing for December 14, 2016. The Court scheduled a detention hearing as requested,
 22 referred the matter to Pretrial Services for a bail study, and detained the defendant pending the hearing,
 23 as required by Section 3142(f).

24 On December 14, 2016, Pretrial Services provided a report that included the defendant's
 25 employment history, travel history, health information, and custodian information. The report noted that
 26 the defendant was not currently employed, and had spent significant lengths of time in Yemen.
 27 Importantly, the report also contained allegations by an FBI agent that the defendant had been involved
 28

1 in planning certain terrorism-related conduct before being arrested on the instant identity theft charges.
2 During the hearing counsel for the defendant offered information about his proposed custodians and
3 suggested release conditions. The government countered with a description of the alleged terrorism-
4 related conduct in which the defendant was involved, including descriptions of instant messages
5 allegedly sent by the defendant and recordings made of the defendant by undercover agents.

6 **II. ANALYSIS**

7 For the reasons stated on the record on December 14, 2016, the Court finds that the government
8 has met its burden that the defendant poses both a serious risk of flight and a danger to the community.
9 In particular, although the defendant is currently charged only with aggravated identity theft, the Court
10 is concerned about the serious nature of the alleged terrorism-related conduct in which the defendant
11 was involved. The Court notes that the defendant allegedly went so far as to meet with undercover
12 agents on multiple occasions to plan a potential terrorist attack. The Court is also concerned about
13 statements that the defendant allegedly made regarding plans to flee to Mexico and elsewhere after
14 engaging in such an attack. The Court also notes the apparent lack of any appropriate sureties and
15 custodians.

16 **III. CONCLUSION**

17 For the reasons set forth herein, as well as those stated on the record on December 14, 2016, the
18 Court hereby finds that the government has met its his burden that the defendant poses both a serious
19 flight risk and a danger to the community.

20 Therefore, the Court ORDERS that the defendant be detained.

21
22 IT IS SO ORDERED.

23
24 DATED: December 20, 2016


HONORABLE KANDIS A. WESTMORE
United States Magistrate Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

V.

AMER SINAN ALHAGGAGI,

Defendant.

Case No.16-mj-71531-MAG-1 (KAW)

SEALED

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 12/21/2016, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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S. Waqar Hasib
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San Francisco, CA 94102

Dated: 12/21/2016

Susan Y. Soong
Clerk, United States District Court

By: Susan Ambriani
Sue Ambriani, Deputy Clerk to the
Honorable KANDIS A. WESTMORE